

STATE OF MICHIGAN  
COURT OF APPEALS

---

In the Matter of AUSTIN TASCHEREAU and  
EDWARD TASCHEREAU, Minors.

---

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

EDWARD TASCHEREAU,

Respondent-Appellant.

---

UNPUBLISHED

August 12, 2004

No. 252707

Roscommon Circuit Court

Family Division

LC No. 02-723653

Before: Hoekstra, P.J., and Cooper and Kelly, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court order terminating his parental rights to the minor children under MCL 712A.19b(3)(a)(ii) and (g). We affirm.

This matter began when respondent and the mother of the minor children left them with relatives for an intended stay of several days and then could not be located for the return of the children. The Family Independence Agency filed a petition for temporary custody of the children, and Edward was placed in foster care while Austin was placed with his maternal aunt. After respondent remained out of contact with his children and the agency for a period of time, the agency filed a supplemental petition seeking permanent custody of the children. Following an adjudication trial, the court took jurisdiction over the minor children. The court then terminated respondent's parental rights at the initial dispositional hearing.

On appeal, respondent asserts that the termination of his parental rights must be reversed because the trial court erroneously considered various reports that constituted inadmissible hearsay at the dispositional hearing. Generally, we review a lower court's decision to admit evidence for an abuse of discretion and underlying issues of law de novo. *People v Lukity*, 460 Mich 484, 488; 596 NW2d 607 (1999). This issue is not preserved for appeal because respondent's trial counsel failed to object to the admission of some of these reports and objected to others on grounds different from those now asserted on appeal. MRE 103(a)(1). Therefore, our review is limited to plain error affecting respondent's substantial rights. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999). It appears that respondent's trial counsel, indeed all counsel below and the trial court as well, was under the incorrect impression that because this was an initial dispositional hearing, the rules of evidence did not apply. MCR

3.973(E)(1), (2). However, as respondent correctly notes on appeal, when parental rights are terminated at an initial dispositional hearing, the court may only rely upon legally admissible evidence to establish the statutory grounds for termination. MCR 3.977(E)(3).

Respondent's assertion of error in the admission of the reports of the Family Independence Agency and the Foster Care Review Board lacks merit because these documents are records of regularly conducted activity, admissible pursuant to MRE 803(6). While the other documents were arguably inadmissible, we conclude that any error in their admission was harmless. MRE 103(a). The psychological reports were essentially cumulative of the testimony of their authors, both of whom testified below. Further, the trial court, while noting the admission of these exhibits in its written opinion, did not rely on them in its extensive findings of fact and conclusions of law concerning the statutory grounds for termination. Finally, these items, even though otherwise inadmissible hearsay, were properly admitted to aid in the trial court's determination concerning the best interests of the children. MCR 3.977(E)(3)(b), (G)(2).

Respondent also contends that he received ineffective assistance of counsel at the termination hearing because his attorney failed to object, or to object on appropriate grounds, to inadmissible evidence. The principles of effective assistance of counsel developed in the criminal context apply by analogy in child protective proceedings. *In re CR*, 250 Mich App 185, 197-198; 646 NW2d 506 (2001). To prevail on a claim of ineffective assistance of counsel, respondent must show that his trial counsel's performance was deficient, that is, it "fell below an objective standard of reasonableness" and that respondent was so prejudiced that he was denied a fair trial. *Id.* at 198, quoting *People v Pickens*, 446 Mich 298, 338; 521 NW2d 797 (1994). In order to show prejudice, respondent must demonstrate "a reasonable probability that, but for counsel's unprofessional errors, the result would have been different." *Id.*, quoting *People v Johnson*, 451 Mich 115, 124; 545 NW2d 637 (1996).

The performance of respondent's counsel did not fall below an objective standard of reasonableness when he failed to object to evidence that was admissible under MRE 803(6), such as the reports of the Family Independence Agency and the Foster Care Review Board. Counsel's failure to object to other inadmissible hearsay, notably various psychological reports, arguably fell below an objective standard of reasonableness. However, there is no evidence whatsoever that the erroneous admission of these items so prejudiced respondent as to deprive him of a fair trial. *In re CR*, *supra* at 198. On the same grounds that we have already concluded that any error in the admission of the reports was harmless, we also find no likelihood that the result would have been different but for counsel's errors. *Id.*

Finally, respondent challenges the sufficiency of the evidence for the termination of his parental rights. The trial court did not err by finding that the statutory grounds for termination were established by clear and convincing evidence. MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Respondent had no contact whatsoever with Austin after leaving him with relatives in November 2002. He failed to appear for two scheduled visits with Edward, and despite arrangements for the children to telephone respondent in lieu of visits, respondent was available at the appointed time infrequently, if at all, in the ninety-one days preceding the filing of the termination petition. Respondent has never initiated contact with either child and failed to support them or undertake any actions to regain custody of them. Under these circumstances, the trial court did not clearly err by finding termination warranted under MCL 712A.19b(3)(a)(ii). *In re Trejo*, 462 Mich 341, 364-365; 612 NW2d 407 (2000).

Termination was also appropriate on the grounds that respondent failed to provide proper care and custody for the minor children and would be unable to do so within a reasonable time considering their ages. MCL 712A.19b(3)(g). Respondent clearly failed to provide proper care and custody for the minor children when he left them in the care of relatives for an intended visit of several days and then could not be located for the return of the children. Moreover, respondent continued to lack stable and suitable housing at the time of the termination trial. He had been living for approximately one-and-a-half months with a girlfriend and her three children in a two-bedroom apartment of which she was the sole lessee. Respondent admitted he did not know how he would care for his children if his girlfriend were to remove him from her life. The trial testimony of respondent and his father-in-law indicated that respondent had a significant history of substance abuse. Respondent lost possession of a trailer that his father-in-law provided for him and his family due to failure to make modest monthly payments, during a period when respondent was employed and making \$400 to \$700 per week. This history, together with respondent's complete failure to come forward and take any action toward reunification in this matter, presents a bleak outlook for his future ability to care for the children. That conclusion is supported by psychological evidence. Respondent was diagnosed as suffering from parent-child problems, partner relational problems, mild depression and personality disorder with mixed features. In order to parent the children, respondent would need to make a substantial change from his current lifestyle, which was described as being driven to avoid upset and randomly move away from discomfort. The prognosis for respondent's being able to parent the children was poor. The psychological testimony indicated that the internal shift that would be necessary had not been made, and indeed might never be made. On a record reflecting a lengthy history of failing to attend to the basic needs of the children and a poor prognosis for change, the trial court did not clearly err by concluding that there was no reasonable likelihood that respondent would be able to provide proper care and custody for the children in the reasonable future. *Id.*

There was little evidence of any bond between Austin and his father, and conflicting evidence concerning respondent's bond with Edward.<sup>1</sup> Unfortunately, respondent remains unable to provide the children with stability. In these circumstances, the trial court's finding regarding the children's best interests was not clearly erroneous. MCL 712A.19b(5); *Trejo*, *supra* at 364-365.

Affirmed.

/s/ Joel P. Hoekstra  
/s/ Jessica R. Cooper  
/s/ Kirsten Frank Kelly

---

<sup>1</sup> Psychological evidence indicated that Edward did not show a strong attachment to his parents, while a social worker testified that there was a strong bond. Notably, Edward showed vast improvement since his placement in foster care.